

EX PARTE

February 19, 1998

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Ex Parte Submission for Reconsideration proceedings in  
CC Dockets 97-208 and 97-137

Dear Ms. Salas:

On behalf of Sprint Communications Company, L.P., we are submitting this letter to address the issue of joint marketing raised in the reconsideration round of each of the above-referenced proceedings.<sup>1</sup> For the reasons discussed below, Sprint believes that the Commission should reconsider its *South Carolina Order* with respect to the issue of BOC joint marketing.

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<sup>1</sup> Application of BellSouth et al. Pursuant to Section 271 to Provide In-Region InterLATA Services in South Carolina, FCC 97-418, *Memorandum Opinion and Order* (rel Dec. 24, 1997), (Jan 2, 1998) ("*South Carolina Order*" or "*Order*"); Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region InterLATA Services in Michigan, FCC 97-298, *Memorandum Opinion and Order* (rel Aug. 19, 1997), petitions for reconsideration pending ("*Ameritech-Michigan Order*").

The issue of accomodating the FCC's equal access policies with a LEC's ability to jointly market local and long distance services has been governed by long-standing rules and policies of the FCC. Sprint and other vertically integrated companies, providing both long distance and local telephone services, have been successfully operating under these rules for many years. The soundness of these policies has been confirmed by the FCC at least twice since the 1996 Act was enacted, first in the FCC's *Non-Accounting Safeguards Order*<sup>2</sup> and then again in the *Ameritech-Michigan Order*. Neither the record nor the Commission's pro-competitive policies can support the unexplained turnaround reflected in the *South Carolina Order*. As AT&T's Petition for Reconsideration correctly explains, rational decisionmaking requires nothing less. See *Motor Vehicles Mfgs. Assn. v. State Farm Mutual Auto Ins.*, 463 U.S. 29 (1983).

Sprint will not here reiterate the full legal analysis of the history of the equal access obligations, and its correct intersection with Section 272(g), as it has been

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<sup>2</sup> In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking at ¶ 292 ("*Non-Accounting Safeguards Order*").

set out by AT&T in its petition. The *South Carolina Order* ignores that history, as well as the agency's own earlier analysis, however, in a stated effort to "harmonize" the equal access requirements with the BOCs' ability to jointly market.<sup>3</sup> What the *Order* achieves is not a true harmonization of the two concerns but rather a solution that allows joint marketing to eclipse and defeat the equal access policies. Allowing BOCs to begin recommending the services of their interLATA affiliate prior to the offer to read a list of competitive alternatives in effect renders the offer unattractive and ineffectual. Access to the BOC's local customers most definitely becomes "unequal" if the BOC's interLATA affiliate is given this significant (yet artificial) advantage. The Commission's goal must be instead to implement both concerns in a meaningful way.

The *South Carolina Order* expresses a concern that earlier FCC decisions "placed too much weight on the equal

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<sup>3</sup> The *Order* describes a BOC's "right under the Act" to engage in joint marketing. Sprint notes briefly that this is a misnomer: there is no statutory "right" created by subsection 272(g). Instead, there is a transitional statutory prohibition on joint marketing in 272(g)(2), and a "rule of construction" in 272(g)(3) which forecloses the FCC from finding joint marketing activity to be a *per se* violation of the ban against discrimination. There is nothing in this language to suggest that the FCC cannot regulate the manner in which BOCs jointly market, however, and such a dramatic curtailment of existing regulatory authority should not be read into this language.

access obligations."<sup>4</sup> The *Order* notes that the equal access rules were written at a time when the BOCs could not provide interLATA services,<sup>5</sup> implicitly suggesting that they were not considered in an environment of vertical integration. This is simply not the case. The equal access rules were imposed on independent telephone companies, including those with long distance affiliates such as Sprint. Companies such as Sprint dutifully complied with the Commission's equal access rules for the past dozen years without substantial burden; they have engaged in lawful joint marketing without unfairly leveraging one market position to another. It is really the latter "unfair advantage" which the BOCs seek here, as the *Ameritech-Michigan Order* had correctly recognized.<sup>6</sup>

It is important to underscore (as the BOCs themselves repeatedly do) that a grant of Section 271 relief in a particular state does not equate to the presence of perfect competition for local telephone services in that state. Thus, even with Section 271 approval, BOCs will continue to enjoy substantial ability to leverage their favorable positions as market incumbents into interLATA services

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<sup>4</sup> *Order* at ¶ 238.

<sup>5</sup> Id.

<sup>6</sup> See *Ameritech-Michigan Order* at ¶ 376.

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unless the Commission continues to keep a watchful eye and insist on market rules that require competition on the merits. The equal access obligations of the Commission, codified in Section 251(g), are the critical underpinnings to ensure that long distance customers are indeed won on the merits -- not by overreaching or leveraging.

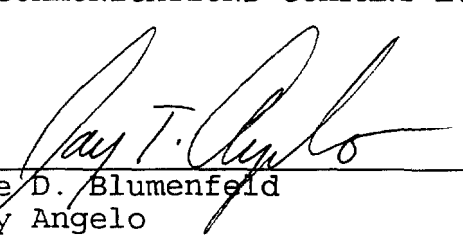
Given the level of controversy generated to date, the Commission may wish to articulate a set of clear overarching principles to govern inbound joint marketing activity by BOCs. In any event, the Commission should correct the error made in the *South Carolina Order* that allows a BOC to recommend the interLATA services of its affiliate without first having complied with its equal access obligations, *i.e.*, to offer to read a list of competing carriers.

Respectfully submitted,

**SPRINT COMMUNICATIONS COMPANY L.P.**

Leon Kestenbaum  
Richard Juhnke

**SPRINT COMMUNICATIONS  
COMPANY L.P.**

  
Sue D. Blumenfeld  
Jay Angelo

**WILLKIE FARR & GALLAGHER**